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### MEMO

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Ravalli County Commissioners

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TO: Senator Jim Shockley

FROM: Alex Beal, Deputy **AB**

CC: George H. Corn  
Ravalli County Commissioners  
Ravalli County Legislative Delegates

DATE: April 7, 2008

RE: Practical Issues with MCA § 53-21-140 Video-Conference Appearances in Mental Commitment Proceedings

Dear Senator Shockley:

This letter is a follow up to our correspondence with you following your visit with the County Commissioners back in January regarding mental health issues. As we mentioned then, we have had a number of issues with the current language in MCA § 53-21-140, which relates to the use of two-way audio-video equipment for appearances. Specifically subsection 5 states that "[i]f a respondent or patient, the respondent's or patient's counsel, or the professional person object to two-way electronic audio-video communication in lieu of a hearing in person, the court may not allow a two-way electronic audio-video communication." It is our opinion that this language is written too broadly. While we are not arguing that a trial on a petition for commitment should be conducted via video-conference, regardless of a respondent's wishes, the reading of the rights hearing is a much different matter. That hearing merely consists of a Justice of the Peace reading off the following rights found in statute:

- (1). The right to reasonable advance notice of any hearing or other Court proceeding concerning you;
- (2). The right in any hearing to be present, to offer evidence, and to present witnesses;
- (3). The right to know, before a hearing, the names and addresses of any witnesses who will testify in support of a petition;
- (4). The right in any hearing to cross-examine witnesses;

- (5). The right to be represented by counsel; if you are unable to afford an attorney, one will be appointed to represent you at public expense;
- (6). The right to remain silent;
- (7). The right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;
- (8). The right to view and copy all petitions on file with the Court concerning you;
- (9). The right to be examined by a professional person of your choice when the professional person is reasonably available, and if you are unable to afford a professional person, one will be appointed to examine you at public expense;
- (10). The right to be dressed in the your own clothes at any hearing;
- (11). The right to refuse any but lifesaving medication for up to twenty-four (24) hours prior to any hearing held;
- (12). The right to voluntarily take necessary medications prior to any hearing;
- (13). The right to request a jury trial;
- (14). The right to be detained in the least restrictive environment required to protect your life and physical safety and the safety of others and to prevent significant injury to property;
- (15). The right to request a detention hearing to challenge the grounds alleged for detaining you or the adequacy of the facility being used to detain you; and
- (16). The right to appeal any order of the Court committing you to treatment.

While we appreciate the importance of ensuring that the respondent is well aware of all of his/her rights, it seems unnecessary to transport the respondent back to Ravalli County solely for that purpose. It is the rare county of the 56 that has a mental health facility within its borders capable of holding a respondent during the commitment process. Most counties either transport the respondent to the State Hospital, to Billings, or some other facility, often a significant distance away. In the case of Ravalli County, this process consists of a Sheriff's deputy driving three hours to Warm Springs, picking up the respondent, then driving three hours back to Ravalli County. After the hearing in front of the JP, generally a ten minute affair, the respondent is transported back to Warm Springs (another three hours), after which the deputy has to return (a final three hours). All told, a Sheriff's deputy is off the streets for 12 hours, all so that the respondent can be physically present for a ten minute hearing at which they will not be allowed to offer any testimony or input.

We have begun to work with the local office of the State Public Defender regarding this issue. While their concerns are understandably less about the stress and costs to law enforcement, the stress on the often mentally fragile respondents has not escaped them. These respondents have often suffered some form of breakdown or attempted suicide the day or two prior to this hearing. Taking them away from the structured and monitored environment of a mental health facility for a six hour trip hardly seems to be in their best interest.

In our prior conversation we had mentioned a few potential changes to address this situation. One would be requiring the respondent's counsel to travel to the State Hospital (rather than bring the respondent to counsel). This would allow for counsel to have a full-blown face to face meeting with their client without subjecting the respondent to that travel. Alternatively, the respondent's counsel could arrange for a private video-conference with their client, at which they could introduce themselves and conduct their initial conversations. Having met face to face in this matter, it seems likely that telephone conversations would suffice from that point on.

It is certainly not our interest to abrogate an individual's right to be personally present at hearings. However, this right should be weighed against the burden on mentally ill individuals to be transported, sometimes in poor health, back and forth from the State Hospital 2 or 3 times. Please let us know if we can provide any additional information to you to assist in changes you would propose. We certainly support eliminating the need for repetitive transports for both respondents and county personnel (sheriff's deputies). There is also a safety factor to consider for all involved given this repetitive highway travel, sometimes in inclement weather.

Thank you so much for your concern about this issue and for all of your help.